ment which equity should refuse to enforce specifically. Its purpose was to coerce other workingmen to join the union, thus interfering with their right to dispose of their labor to any one who was willing to employ. Every act which tends to limit the exercise of this right militates against the spirit of our government and is, *pro tanto*, detrimental to the public weal. See *Plant* v. *Woods*, 176 Mass. 492. As an attempt to compel unionizing, it is a contract which would be no defense to an action by a workman discharged in obedience to the agreement, whether or no his discharge included a breach of an employment contract. *Curran* v. *Galen*, 152 N. Y. 33; *Lucke* v. *Assembly*, 77 Md. 396. And see *Read* v. *Friendly Society, etc.*, 47 Sol. Jour. 23. Obviously this type of restrictive contract is not regarded with favor by the courts, and equity does wisely in refusing its extraordinary relief of specific performance. The result of the principal case therefore is sound, though the reasons advanced by the court are not in themselves conclusive.

TENANT'S DECLARATIONS AS AFFECTING LANDLORD'S ACQUISITION OF TITLE BY ADVERSE POSSESSION. — A mortgagee of land to which the mortgagor had had no title foreclosed his mortgage, but took possession only through a tenant who entered under a verbal agreement to purchase. The tenant held for twenty years without carrying out this agreement, freely admitting to all the world in the meantime that the plaintiff was in fact the true owner. Subsequently the mortgagee conveyed to the defendant. It was held that the statements of the tenant were admissible in evidence in a suit by the true owner for the recovery of the land. *Walsh* v. *Wheelwright*, 96 Me. 174. The exact point raised in the case seems to be new. The court bases its decision largely upon the argument that the tenant's statements were admissible as being against his pecuniary interest. It is suggested, however, that the evidence might have been admitted without placing it under one of the exceptions to the rule against hearsay. In fact, the declarations of one in possession of land as to the character of the possession may be regarded as original evidence, for the reason that the very question in issue is whether there has been possession for the statutory period under a claim of right. Accordingly, testimony as to the claim made by the occupant is no less original evidence than is testimony as to the possession itself. GREENL. Ev., 16th ed., §§ 108, 152 c, 189. Consequently, such statements are admitted when they are in the interest of the declarant as well as when they are against his interest; and it need not be shown that the declarant is dead or incapable of appearing as a witness. *Webb* v. *Richardson*, 42 Vt. 465; *Smith* v. *Putnam*, 62 N. H. 369.

So far as the technical rules of evidence are concerned, then, the statements of the tenant seem equally admissible whether they are considered original evidence or brought within an exception to the rule against hearsay. A more serious objection is raised, however, by the rule of substantive law that a tenant is estopped to deny his landlord's title. *Granger* v. *Parker*, 137 Mass. 228. It follows from this rule that if a tenant put in possession by a landlord who has no title occupies adversely to the true owner for the statutory period, the title which he gains accrues to the landlord; for the true owner is barred by the statute, and the tenant is estopped to claim title as against his landlord. Again, if the tenant wrongfully attorns to a stranger without bringing the fact to the landlord's notice, it would seem that the stranger can acquire no title by the tenant's possession, since he derives his

title through the tenant and is equally estopped from denying the landlord's title. *In re Emery and Barnett*, 4 C. B. N. S. 423, 431. The answer to this argument as applied to the principal case, however, is that the true owner does not claim against the landlord through the tenant, but by virtue of his own paramount title. Consequently he is not estopped from setting up the tenant's statements against the landlord. See *Russell* v. *Erwin's Adm'r*, 38 Ala. 44. This result, though reached on purely technical grounds, seems to be desirable, for in the majority of such cases the only possession which the true owner has reason to notice is the possession of the tenant, and so long as that possession is not adverse it does not seem just that he should lose his rights in the land.

THE DOCTRINE OF WAIVER IN INSURANCE LAW. — Probably in no branch of the law are questions of waiver of so frequent occurrence or of so great practical importance as in insurance litigation. Speaking generally, the defense of waiver can be established only by showing a contract to waive or the existence of such circumstances as will furnish ground for an estoppel. In insurance cases this rule was stated at an early period, and prevails to-day in a few jurisdictions. *Merchants Mut. Ins. Co.* v. *Lacroix*, 45 Tex. 158; and see *Weidert* v. *State Ins. Co.*, 19 Ore. 261. The tendency of recent adjudications in such cases, however, is to allow a waiver, though there be no basis for it in contract or estoppel. *Titus* v. *Glen Falls Ins. Co*, 81 N. Y. 410, overruling *Ripley* v. *Aetna Ins. Co.*, 30 N. Y. 136. This has long been true in certain other branches of the law. Thus a surety who has been released because the creditor gave time to the principal debtor by agreement, revives his liability by acknowledging himself to be liable. *Hooper* v. *Pike*, 72 N. W. Rep. 829 (Minn.). An indorser of a bill of exchange, in a similar manner, by a promise to pay waives the defense created by the holder's failure to notify him of dishonor. *Segerson* v. *Mathews*, 20 How. (U. S. Sup. Ct.) 496. These decisions rest largely on their analogy to cases involving the waiver of the Statute of Limitations, where an unsupported promise has long been held sufficient. WOOD, LIMITATIONS, § 68. In all such cases the defenses waived have been raised by technical rules of law, the effect of which courts may well wish to avoid. An argument from these classes of cases to others must be made with caution. A line of decisions having a more direct bearing upon the insurance cases establishes the rule that the acceptance of rent which accrued after the forfeiture of a lease by breach of condition, waives the forfeiture. *Pennant's Case*, 3 Co. 64 a. The acceptance of rent is an acknowledgment of the existence of a lease; hence the lessor cannot later deny the lease without taking inconsistent positions.

The latest and most extreme expression of the view that waiver need not be based upon either contract or estoppel is found in an Indiana decision. *Germania Fire Ins. Co.* v. *Pitcher*, 64 N. E. Rep. 921 (Ind., Sup. Ct.). A fire insurance policy contained the condition that proof of loss must be made within sixty days after a fire. To establish a waiver of this condition the insured set up in replication that the company had based its refusal to pay the policy not upon the breach of the condition but upon a different ground. The court, in overruling a demurrer to this replication, stated that a refusal within the sixty day period would be a waiver *per se*. This point seems fairly well established, and correctly, since from the company's act